

# HOUSE BILL REPORT

## HB 1829

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to records of conviction for misdemeanor and gross misdemeanor offenses.

**Brief Description:** Adjusting provisions relating to records of conviction.

**Sponsors:** Representatives Appleton, Lantz, Lovick, Hasegawa, Flannigan, Moeller, Darneille, McCoy and Simpson.

**Brief History:**

**Committee Activity:**

Judiciary: 2/15/05, 3/1/05 [DPS].

**Brief Summary of Substitute Bill**

- Permits misdemeanor records to be vacated even if the applicant previously had another record vacated.
- Limits the prohibition on vacating records of applicants who have been convicted of a new crime.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Lantz, Chair; Williams, Vice Chair; Campbell, Kirby, Springer and Wood.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; and Serben.

**Staff:** Erik Van Hagen (786-5793).

**Background:**

In 2001, the Legislature permitted misdemeanor and gross misdemeanor offenses to be vacated by court order once the offender had completed all the terms of his or her sentence. The court is prohibited from vacating a record if: (1) the applicant has criminal charges pending; (2) the offense was a violent offense or an attempt to commit a violent offense; (3) the offense was a violation of driving under the influence (DUI) or other DUI related crimes; (4) the offense involved obscenity, pornography, or sexual exploitation of a child; (5) the offense involved domestic violence (unless certain conditions are met); (6) the applicant has

been convicted of a new crime in Washington, another state, or in federal court since the date of conviction; (7) fewer than three years have passed since the applicant completed the terms of his or her sentence (except for domestic violence related misdemeanors); (8) the applicant has had the record or another conviction vacated; and (9) the applicant is currently restrained or has been restrained in the last five years by a domestic violence protection order, no-contact order, antiharassment protection order, or other civil restraining order.

A record is vacated by the court by: (a) permitting the applicant to change their plea from guilty to not guilty; (b) setting aside the guilty verdict; or (c) dismissing the information or indictment against the offender and vacating the judgments and sentences.

#### Vacated Misdemeanor and Gross Misdemeanor Records

Following the vacation of a criminal record, the applicant may state he or she has never been convicted of that crime for all purposes, including employment applications. The order vacating the conviction will be transmitted to the Washington State Patrol and local law enforcement to ensure the records reflect the order to vacate. The conviction record cannot be disclosed to anyone except criminal justice agencies and may not be used as "criminal history" for purposes of sentencing for a subsequent offense. However, the prior conviction may be used in a later prosecution.

#### Sealed Records

Courts may seal court files or records pursuant to statute or court rule. Washington Court General Rule 15 (GR 15) authorizes the court to seal records when authorized by statute or when compelling circumstances are shown. When a record is sealed, it is protected from examination by the public or nonauthorized court personnel. If the file is a paper or microform document, this is done by placing a seal on the file that must be broken in order to gain access. If the file is computerized, it is sealed by limiting access only to authorized court personnel.

#### Compelling Circumstances as Justification for Sealing Records

In the case of *Personal Restraint Petition of Gentry*, the Washington Supreme Court stated that the requirement of compelling circumstances for sealing records is mandated by the Washington Constitution's requirement for open administration of justice (Article I § 10). Allowing sealing of records without compelling circumstances may raise constitutional issues. No case law is directly on point regarding whether less than compelling circumstances can be demonstrated when sealing records pursuant to state statute. However, case law suggests that at a minimum, courts will conduct some analysis that would include consideration of the need for sealing the record weighed against the public's interest in open access to the files.

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#### **Summary of Substitute Bill:**

The prohibition of permitting the vacation of records of applicants who have had the record of another conviction vacated is removed. A misdemeanor record may be vacated even if the applicant had a previous record vacated. A subsequent conviction is only a bar to having a

conviction vacated if fewer than three years have passed since the person completed the terms of the sentence for the new offense.

The bill makes several technical corrections to the current statute, specifically changing terms from singular to plural.

**Substitute Bill Compared to Original Bill:**

The substitute bill removes the provision permitting the sealing of vacated records without a demonstration of compelling circumstances and removes the provision permitting the offender's name to be replaced with his or her initials in the case index. The substitute bill requests that the Judicial Information System Dissemination Subcommittee examine ways that vacated records can be better protected.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Only one misdemeanor may currently be vacated, which presents problems for people who made mistakes in their past and are attempting to move on with their lives. These convictions can be a bar to obtaining housing, employment, higher education, and insurance. Without sealing, protections for vacated convictions become empty promises. Subscription services make vacated records accessible, which runs the risk that people who state they have never been convicted as provided by statute may be contradicted by a background check. This bill keeps up with technological changes in record keeping.

(With concerns) Record keeping is tied to the offender's name, and removing the case name from the index presents administrative and technological problems. Knowing the offender's name is within the public's interest. The integrity of the information is lost when only initials are made available. Data companies already have this information, and the sealing provision will have no practical effect.

**Testimony Against:** None.

**Persons Testifying:** (In support) Representative Appleton, prime sponsor; and Kurt Bennett and Jeff Kradel, Washington Defenders' Association and Washington Association of Criminal Defense Lawyers.

(With concerns) Rowland Thompson, Washington Newspaper Publishers and Allied Daily Newspapers.

**Persons Signed In To Testify But Not Testifying:** None.